

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Montez Salamasina Tuia: Ottley)	Civil No. _____
)	D.C. No. CR-00-00126-MLR
Applicant/Plaintiff,)	
)	
v.)	VERIFIED APPLICATION FOR
)	WRIT OF HABEAS CORPUS;
UNITED STATES DISTRICT)	DEMAND FOR JUDGMENT;
COURT JUDGE MANUAL L REAL)	ATTACHMENTS "I"- "III, WRIT
AND JOHN RATHMAN AS)	AND SUMMONS TO ISSUE FROM
WARDEN UNITED STATES)	COURT
FEDERAL DETENTION CENTER)	
HONOLULU, HAWAII)	
)	
Respondents/Defendants.)	
_____)	

VERIFIED APPLICATION FOR WRIT OF HABEAS CORPUS
(Hereinafter "Application")

Montez Salamasina Tuia: Ottley - Detainee
87604-022/3A-22
C/O Federal Detention Center - Custodian
351 Elliott Street – P.O. Box 30080
Honolulu, Oahu, Hawaii 96820

Note:

This document is being presented a second time to the Honolulu Federal District Court ("Court") in part, i.e. less its previously filed Attachments, due to Court's loss or misplacement of the original that had been mailed via the U.S. Postal Service as an attachment to my Verified Notice of Proof of Notification which necessarily included the above-entitled court's Civil Number and the Attachments, which Attachments are filed and noticed by Court.

"ATTACHMENT"

APPLICATION

I Montez, the detained Applicant/Plaintiff (hereinafter “Me”, “My”, “Myself”, “Mine”, and/or “I”) HEREBY DECLARE that I am an American Hawaiian that is unlawfully held prisoner by the United States of America (“U.S.”) via its district detention center (“Prison”).

Because the U.S. District Court for the District of Hawaii (“DC”) has neglected its obligation that calls for its timely order settling My 28 U.S.C. § 2255 motion filed September 27, 2005 (“Motion”), the above-entitled court (“9th”) via DC’s negligence is presented this alias writ of habeas corpus application, which enables 9th to issue its writ to summon the above-entitled Respondents/Defendants (“Respondent”) to return their certified true cause of My detainer, if any there be, and thereby reach full settlement/closure regarding U.S. jurisdiction over Me.

I HEREBY incorporate into this Application by reference the DC Clerk’s entire docket regarding U.S. OF AMERICA v. MONTEZ SALAMASINA OTTLEY© in D.C. Case No. CR-00-00126-MLR (“CR-00-00126-MLR”), or any derivative thereof as if set forth fully herein, which include all documents and other certified evidence contained therein if any there be, and further

I HEREBY VERIFY THE FOLLOWING:

I. JURISDICTION AND VENUE

On March 8, 2004 and again on September 22, 2005, DC upheld its judgment, conviction, and sentence in criminal case number CR-00-00126-MLR (“Sentence”).

On September 27, 2005, I filed in DC, civil case number CV-05-00624-MLR-KSC My Motion to vacate Sentence in want of jurisdiction, which DC appears to have abandoned, as no order has issued. See Attachment I.

DC has denied My sought after remedy and relief via its unwarranted silence, which now enables 9th to acquire jurisdiction under habeas corpus pursuant to the U.S. Constitution and the laws governing such relief. Venue is proper in 9th because I am unlawfully detained within a U.S. Prison.

II. FACTS OF THE CASE

DC has never possessed the alleged charging document to permit it to make judgment let alone Sentence against Me in the first instant, as I am not a U.S. Federal or State employee, corporation or corporate citizen, person, fiction, accommodation, franchise, charterer or contractor subject to either acts of Congress or to any State Legislature, nor am I engaged in or enjoined to the U.S., or to any State, nor am I a surety, or guarantor for any of the aforesaid entities (“Similes”); I hold no commission, nor fill any office under aforesaid government

Similes, nor any other whatever, as governments realize Similes represent public colorable creatures of state, which I am not, neither are the numerous other non-public American populace of people who live within the private sectors located throughout our American and Hawaiian societies.

III. GROUND FOR 9TH TO ISSUE JUDGMENT

On November 3, 2005 I received U.S.'s uninvited irregular motion file stamped October 20, 2005 presented for dismissal of My Motion ("Dismissal"), yet Dismissal lacked the prerequisite of 28 U.S.C. § 2255, i.e. verification proving conclusively that I am not entitled to relief. See Attachment II.

On November 7, 2005, I replied to Dismissal, which included My notice of "...Demand for Order to Settle Jurisdiction", see Attachment III. To date DC appears vacant, whereas in its silence jurisdiction is not supported nor maintained.

DC's irregularities are all noted of record, and its Sentence was had without jurisdiction. DC lacked any substantial evidence of record i.e. the original charging document/lex loci granting jurisdiction in the first instant, yet DC Judge Manuel L. Real ("Real") acting under what appeared as a misuser/nonuser unlawfully charged Me with having possession of certain U.S. obligations and/or duties to act on behalf of U.S. domestic banking system as well as operating within the U.S. Postal Service, and thereby unlawfully Sentenced Me on eleven

(11) counts of mail fraud, wire fraud, conspiracy to launder monetary instruments, and money laundering, money transactions, and structuring.

Sentence is a direct violation of the intent of congress, and was had by means of DC's willful deviation from law via Real's usurpation. Judgment is not founded on any bona fide claim upon which relief might have been granted in the first instant, nor is it based on the life or contract of any INJURED PARTY, INDICTMENT, ARRAIGNMENT, PLEA, OR OTHER INITIATING ACTION that would permit a new trial let alone Sentence.

DC, via Real, in lieu of issuing a constitutional "warrant of commitment" ("Warrant"), in violation of law orally remanded Me to the custody of the U.S. Marshal ("Marshal") to serve out a term of 235 Months.

I am presently imprisoned against My will under color and pretense of law. The U.S. commission purportedly assigned to Me is shrouded in silence instead of grounded in substantial evidence of fact i.e. proof of claim. From the outset the U.S. has refused to provide any initiating civil action that would state its claim upon which relief can be granted, whereas its omission to initiate a new case/trial as directed by 9th's May 12, 2003 Memo in No: 02-10373 ("Memo") is conclusive evidence of its departure from the normal course of business.

DC's false imprisonment of Me is in violation of law, an abuse of discretion, arbitrary capricious, and discriminatory. DC's trial and Sentence was irregular, a breach of the Constitution for the U.S., double jeopardy, and a bar to due process of law and equal protection of the law.

In view of 9th's Memo, DC's arbitrary action constitutes cruel and unusual punishment inconsistent and improper with respect to the law, consequently Respondents are found in want of any true cause or claim in which to verify jurisdiction, nor are they holding a true Warrant or lawful detainer for My detention. The Marshals delivered Me to California and back to Hawaii several times without providing Me or the detention centers their requisite orders.

CLAIM ONE

DC's denial of My liberty in want of the original charging document is illegal, as there lies no substantial evidence to identify any cognizable claim against Me, whereas Respondents' imprisonment of Me in light of the conclusive evidence i.e. the Certified Mail Receipts of record is illegal, clearly erroneous, arbitrary, capricious and unconstitutional because the information and reasons set forth above are contradicted by Respondent, as the U.S. has conclusively refused to provide its lex loci initially declaring jurisdiction to grant a trial in the first

instant let alone initiate a new one, and U.S. can raise no new cause, claim, reason, or evidence to support Respondents' unlawful detention of Me.

CLAIM TWO

D.C.'s decision to arbitrarily conduct bogus trials is in excess of its charge, resulting from animus and conflict of interest, was based on fraud and impermissibly discriminatory factors, was contrary to law, clearly erroneous, arbitrary, capricious, unconstitutionally excessive, inconclusive, and subjected Me in violation of its Constitutional mandate to double jeopardy, depriving Me of My life/liberty without due process of law and denied Me equal protection of the law resulting in Respondents' unwarranted immediate false imprisonment of Me.

CLAIM THREE

Upon Memo's issuance, instead of My being instantly released, I was without writ, Warrant, or detainer, irregularly and involuntarily brought back to DC and its so-called controlling statutes, rules, and regulations of color, the practice of which were frequently enhanced/changed to fit DC's needs. The DC expanded its authority by not having to answer to anyone while continuing its unlawful imprisonment of Me. These changes in expanded authority and altered standards unfairly acted to the disadvantage of Me, and as a result of such I was imprisoned without claim or Warrant. These colorable changes in law, practice,

and the insuing pretended procedures during the past, going on six years, have deprived Me of My life, liberty and property without due process of law, denied Me, as well as the American People, equal protection of the law, and deprived Me of freedom in violation of the ex post facto clause of the U.S. Constitution, as on several occassions I had timely and properly noticed Respondents of the U.S.'s departure, yet they knowingly and willfully restrain Me under an imagined cause.

CLAIM FOUR

The failure of the DC to order My release in light of the U.S.'s refusal to evidence the charging document in the first instant, and its failure to produce an indictment to permit a new trial, and its continued confinement of Me against My will, the circumstances are clearly erroneous, ignorance of justice, arbitrary and capricious, motivated by animus and conflict of interest, and is thereby subjecting Me without jurisdiction to cruel and unusual punishment in violation of the constitution for the U.S, which in all suggest a scheme being had against Me and the American People.

WHEREFORE, I Move 9th for relief as follows:

(1) For issuance of its corresponding writ and summons directing the Respondents to forthwith show just and sufficient cause as to why Application is

insufficient for My instant release from Respondent Warden John Rathman's ("Rathman") custody and control;

(2) For an immediate evidentiary hearing upon the merits of this action i.e. should 9th find that an evidentiary hearing is necessary for settlement of the jurisdictional issue in light of the aforesaid conclusive facts of record;

(3) For the issuance of 9th's corresponding writ and other appropriate requisites ordering My immediate release from Rathman's custody and control; and,

(4) For such other and additional relief as is appropriate in the interest of justice which 9th deems just and proper regarding restitution to Me, including My additional property also being unlawfully held in trust by the U.S. in Honolulu Hawaii.

Executed on this 24th day of November 2005, Honolulu, Hawaii.

By: 

For Me

Montez Salamasina Tuia: Ottley – Application for Writ of Habeas Corpus